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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/090,567	02/28/2002	Donald E. Weder	8403.522	5406

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Christopher W. Corbett
Dunlap, Coddling & Rogers, P.C.
Suite 420
9400 North Broadway
Oklahoma City, OK 73114

EXAMINER

GELLNER, JEFFREY L

ART UNIT

PAPER NUMBER

3643

DATE MAILED: 05/13/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/090,567	WEDER, DONALD E.	
	Examiner	Art Unit	
	Jeffrey L. Gellner	3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 February 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

PETER M. POON
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600

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Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 28 February 2002 is: a) ☒ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>3</u> . | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Note: The claims as originally filed lacked a claim 3. These claims were renumber pursuant to 37 CFR 1.126. The pre-amendment cancelled Claim 3. Therefore, the claims have been renumbered as follows: Claims 1 and 2 are as they are in the pre-amendment. Claims 4 and 5 in the preamendment have been renumbered as Claims 3 and 4. Claim 5 is Claim 6 from the original application. Claims 7-25 in the pre-amendment have been renumbered as Claims 6-24. Claims 25-30 are originally numbered Claims 26-31 from the original application. Newly added Claims 26-31 in the pre-amendment have been renumbered as Claims 31-36. Thirty-six claims (1-36) are pending in the application. The independent claims in the application, after renumbering all claims, are 1, 12, 21, 25, 29, 31, and 35.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 22 and 23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As to Claims 22 and 23, line 1, the dependency is to Claim 19 which is not a method claim. Perhaps the dependency should be to Claim 21.

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Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-36 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-24 of U.S. Patent No. 6,105,310. Although the conflicting claims are not identical, they are not patentably distinct from each other because both sets of claims are drawn to a sleeve for covering a pot with a base portion, skirt (with a detachable skirt and upper portion of the base), and a plurality of unconnected, vertical oriented, expandable folds in the base portion, or a method of using the sleeve. Limitations in the dependent claims and the limitation of a tapered shape are obvious variations to one of ordinary skill in the art.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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Claims 1, 7, 8-10, 21, 23, 24, 25, 27, and 29 are rejected under 35 U.S.C. 102(b) as being anticipated by Ottenwalder et al. (5,117,584).

As to Claims 1, 7, and 10, Ottenwalder et al. disclose a preformed sleeve for covering a pot (Figs. 1 and 2) having an upper end, lower end, and outer peripheral surface comprising a base portion having an upper end (Examiner's upper end of Fig. 1) and lower end (Examiner's lower end of Fig. 1) having a bottom (21), the base portion initially having a flat condition prior to being opened (Fig. 2); a skirt portion (Examiner's skirt of Fig. 1) extending from the upper end of the base; and a plurality of unconnected, vertically oriented, accordion-like, expandable folds in the base (3) (continuous between the base and the skirt) wherein when a pot is in the sleeve the folds expand so that the base substantially covers and surrounds the outer peripheral surface of the pot.

As to Claim 8, Ottenwalder et al. further disclose a portion serving as a handle (defined as any part of skirt of Fig. 1).

As to Claim 9, Ottenwalder et al. further disclose a drainage hole (defined as region between lower portion of sleeve and base in Fig. 1).

As to Claims 21 and 24, the sleeve with a base portion, skirt, and vertically oriented, expanded folds is disclosed as described in Claim 1 above. The sleeve of Claim 1 inherently performs the method steps of Claim 21 when used for its intended purpose.

As to Claim 23, the sleeve with folds continuous between the base and skirt are disclosed as described in Claim 10 above. The sleeve of Claim 23 inherently performs the method steps of Claim 11 when used for its intended purpose.

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As to Claim 25 and 27, Ottenwalder et al. disclose a preformed sleeve for covering a pot (Figs. 1 and 2) having an upper end, lower end, and outer peripheral surface comprising a base portion having an upper end (Examiner's upper end of Fig. 1) and lower end (Examiner's lower end of Fig. 1) having a bottom (21), an interior space when opened, the base portion initially having a flat condition prior to being opened (Fig. 2); and a plurality of unconnected, vertically oriented, accordion-like, expandable folds in the base (3) (continuous between the base and the skirt) wherein when a pot is in the sleeve the folds expand to substantially cover and surround the outer peripheral surface of the pot.

As to Claim 29, the sleeve with a base portion with an initial flat condition, skirt, and a plurality of vertically oriented, expanded folds is disclosed as described in Claim 25 above. The sleeve of Claim 25 inherently performs the method steps of Claim 29 when used for its intended purpose.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ottenwalder et al. (5,117,584).

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As to Claims 3-5, the limitations of Claim 1 are disclosed as described above. Not disclosed is the sleeve constructed from a material having a thickness from 0.1 to 30 mils. The examiner takes official notice that it is old and well known in the art to make sleeves for plants or pots from material with a thickness of from 0.1 to 30 mils. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the sleeve of Ottenwalder et al. by making a thickness of from 0.1 to 30 mils so as to conserve material.

As to Claim 6, the limitations of Claim 1 are disclosed as described above. Not disclosed is the sleeve material made of polymer film. The examiner takes official notice that it is old and well known in the art to make sleeves for plants or pots from polymer film. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the sleeve of Ottenwalder et al. by making the sleeve of polymer film depending upon cost of starting materials.

Allowable Subject Matter

Claims 2, 11, 26, 28, and 30 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 12-20 and 31-36 are allowed over the prior art of record.

Claim 22 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

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Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Weder ('657 B1) disclose in the prior art a sleeve with vertical folds.

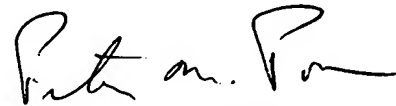
Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Jeffrey L. Gellner whose telephone number is 703.305.0053. The Examiner can normally be reached Monday through Thursday from 8:30 am to 4:00 pm. The Examiner can also be reached on alternate Fridays.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Peter Poon, can be reached at 703.308.2574. The fax phone numbers for the Technology Center where this application or proceeding is assigned are 703.305.7687, 703.305.3597, and 703.306.4195.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.308.1113.



Jeffrey L. Gellner



PETER M. POON
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600